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Sent: Tuesday, September 02, 2014 11:42 AM
To: EBSA, E-ORI - EBSA
Subject: RIN 1210-AB59 (Brokerage Windows RFI)

To Whom It May Concern:

Re: RIN 1210-AB59 (Brokerage Windows RFI)

On behalf of Plan Sponsors and Responsible Plan Fiduciaries, I write to add comments for consideration regarding current uses of and potential new uses for "Self-Directed Brokerage Windows".

In addition to customary uses for brokerage windows in workplace retirement plans, their inclusion in newer plan offerings may, we believe, allow room for new types of plan designs created in alignment with current regulatory guidance as well as marketplace desires. Namely, we foresee opportunity for the combination of a Qualified Default Investment Alternative ("QDIA"), coupled with increased delegation of fiduciary roles and responsibilities, in line with current, heightened regulatory focus.

Background:

We are observing a significant and growing trend toward professional service providers offering what are being loosely categorized "3(16)" Administrative, "3(21)" Co-fiduciary, and "3(38)" Discretionary Co-fiduciary services, as they've commonly come to be known.

Responsible Plan Fiduciaries appear to be embracing these services with growing appetite. As well, providers of such services are expanding their offerings which is leading to more sophisticated technologies to support them. Examples include; custom model portfolios and services that address notification requirements.

Plan Advisers, Recordkeepers, Custodians, and Third-Party Administrators are becoming more sophisticated in their offerings out of an interest in remaining competitive, while also adjusting to newer compliance requirements. As well, such service providers offer economies of scale in their oversight capabilities where, presumably, Plan Sponsors do not have such expertise. This means that providers are customizing their offerings at roughly the same rate with which Responsible Plan Fiduciaries' sophistication is advancing.

Participants, by virtually every unit of measure available consistently fall short of the broader markets (represented by nearly any benchmark one might use). Citing a combination of reasons such as lack-luster performance and the complexity of investment selection, a great percentage of Participants, (by some measures an almost unanimous majority) desire professional investment guidance. This has resulted in significant growth of Target Date and Risk-Based Funds. Recognizing some shortcomings of such funds, not least of which are the often inherent proprietary funds and heavy leaning toward equity funds due in large part to their higher revenue-sharing (generally speaking), some plans are seeking more sophisticated "custom models", tailored to their Plan exclusively.

In the current regulatory environment it is nearly impossible for a "3(38)" co-fiduciary to build and manage model portfolios with anything other than the plan's available menu of funds. Put another way; the design of a Plan's core lineup and a professional, "custom model" investment manager are somewhat at cross-purposes. This results because, while Responsible Plan Fiduciaries seek to maintain

only reasonable investment choices, avoiding extreme or overly niche market types of investments, investment managers seek access to such complex investments out of an interest in managing volatility through diversification. Given current disclosure requirements, this means that an investment manager using investment alternatives beyond the Plan's core lineup would likely be faced with the daunting task of managing fund prospectus and disclosure requirements manually. Newer technology being developed by custodians seeks to address this, however, it's proving costly and difficult. Therefore, it appears that "3(38)" custom model portfolio managers are limiting themselves solely to the plan's core menu of funds – something professional investment managers view as tantamount to handcuffing diversification and performance – or are severely limiting the funds available for the Plan's core lineup.

"Closed" Target Date Funds – overwhelmingly the more popular of the asset allocation models available to participants – are believed to contain conflicts of interest and an inherent disincentive to migrate investment accounts out of equity funds and into fixed income funds as the account owners age. The latter a byproduct of the higher revenue-sharing components inherent in equity mutual funds relative to fixed income mutual funds.

New designs/new plan offerings:

We have seen some interest, both on the part of Responsible Plan Fiduciaries and Service Providers, in the prospect of more complete fiduciary delegation – a scenario in which Responsible Plan Fiduciaries enlist the services of "3(16)" and "3(38)" co-fiduciaries to oversee as many aspects of fiduciary requirement as possible, thereby effectively reducing their administrative burden to merely overseeing the activities of their selected Covered Service Providers.

There are two scenarios in which such Responsible Plan Fiduciaries might utilize the services of a "3(38)" discretionary co-fiduciary to run the investment components of a Plan. In one, the "3(38)" provider simply drives the establishment and monitoring of the Plan's investment menu. In another, the "3(38)" establishes and monitors the investment menu and also builds custom model portfolios that offer professional investment guidance to Participants while also likely affording the Responsible Plan Fiduciaries with the aforementioned QDIA Safe-Harbor, greater flexibility, more transparency, and reduced or eliminated conflicts of interest.

Expanding on these two scenarios in which a "3(38)" discretionary co-fiduciary is used, there is growing consideration of a more advanced service model designed to address all of the issues highlighted above – desire for professional guidance, reduced fiduciary role on the part of Responsible Plan Fiduciaries, and QDIA Safe-Harbor. "3(38)" model-only plans may be a part of the answer. This type of plan would offer only professionally managed model portfolios, either custom target date or risk based (or some combination thereof), and no DIY menu of investment choices. Responsible Plan Fiduciaries gain by soliciting the help of investment professionals in the administration of highly customizable and very transparent plan model portfolios. Participants gain access to professional money managers, at institutional pricing, with greater fee transparency and less likelihood of conflicts of interest than traditional Target Date Funds or other types of "lifestyle funds".

In any of these scenarios, Self-Directed Brokerage Windows play a vital role. If Responsible Plan Fiduciaries goes too far in their pursuit of fiduciary delegation, it should be expected that some segment of eligible employees, however small, would take issue with the notion of only offering professionally managed portfolios. After all, some may have the market savvy, interest, time and/or a personal financial planner who might uniquely customize portfolio construction on their behalf. Therefore,

utilization of a Brokerage Window (we suggest in a “buyer beware” context), allows those who wish to manage their own risk profile and asset allocation to do so completely independently.

Summary:

Current regulations make professionally managed custom model portfolios more difficult to offer in plans in which a traditional menu is also offered because the portfolio manager is effectively limited to only the core menu of available funds. Target Date Funds are often conflicted and can be problematic from a tracking and accountability standpoint. More comprehensive and beneficial custom model portfolios might be offered in conjunction with Self Directed Brokerage Windows. Such brokerage windows are a suitable alternative for those who seek even more unique investment customization than Custom Model Portfolios.

Warmest Regards,

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